> an act of bankruptcy to transfer property with intent to hinder, delay, or defraud creditors. Such transfers have been held to be only those which are actually fraudulent." [3]

This is the opinion of textwriters on the subject.[4] And this was also the conclusion reached by our Supreme Court of Appeals.

The basis of any controversy as to the proper view of the construction of this section must necessarily arise out of the failure to distinguish between the intent to defraud and that to prefer. It is true that in considering whether there was an intent to defraud, the intent to prefer is an important matter to be considered.

> "There is no necessary connection between the intent to defraud and that to prefer, but inasmuch as one of the common incidents of a fraudulent conveyance is the purpose on the part of the grantor to apply the proceeds in such manner as to prefer his family or business connections, the existence of such intent to prefer is an important matter to be considered in determining whether there was also one to defraud. But the two purposes are not of the same quality, either in conscience or in law, and one may exist without the other. The statute recognizes the difference between the intent to defraud and the intent to prefer, and also the difference between a fraudulent and a preferential conveyance. One is inherently and always vicious; the other innocent and valid, except when made in violation of the express provisions of a statute." [5]

S. B. W.

NOTICE AND MOTION—TIME WITHIN WHICH DEFENDANT MUST APPEAR.—Under a proceeding by notice and motion, § 6046 of the Code of 1919 requires that the notice be returned to the clerk's office within 5 days after service, but does not specify any time within which the defendant must appear. Now in regard to the procedure under the usual method of proceeding by writ and declaration, § 6055 of the Code of 1919 provides that "process from any court . . . shall be returnable within ninety days after its date." The question at once arises whether this later section, by analogy, regulates also proceedings by notice and motion, or whether § 6046 is complete in itself, with the necessary consequence that there is no time limit within which the defendant must appear under this section. The mere stating of the question would seem to suggest the answer.

The question above stated was squarely presented in the recent case of *Virginia Hot Springs Co.* v. *Schreck*.[1] It was decided, in an opinion by Judge Burks, that the ninety day clause of § 6055 applied also to the proceeding by notice and motion under § 6046. In the course of the opinion it was said:

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[3] Coder *v.* Arts, 213 U. S. 223, 16 Ann. Cas. 1008 (1909).
[4] COLLIER, BANKRUPTCY (12th Ed.) 1065; 1 REMINGTON, § 1498.
[5] Van Iderstine *v.* National Discount Co., 227 U. S. 575, 582 (1913).
[1] 109 S. E. 595 (1921).

"It is true that § 6046 fixes no appearance day for the notice, but the general rule requiring an act to be done in a reasonable time where no time is fixed should be applied to the case . . . In the case in judgment, the plaintiff had not only passed over a term of court, but had exceeded the limit prescribed by § 6055 by 48 days, or about 7 weeks. If he may exceed it by 7 weeks, why not by 7 months, or 7 years? Where shall the limit be fixed? Unless the limit prescribed by the statute to 'process from any court' be adopted, we are hopelessly at sea as to how to measure 'reasonable time.' "

This is the first time that this particular point has arisen in Virginia, but there are several cases cited in the opinion which show that the two methods of procedure are closely analogous. The decision seems eminently sound on principle and the opinion of Judge Burks is exceedingly well reasoned and lucid. With the ever increasing use of notice and motion this point becomes of more and more vital importance, and it was thought well to call the attention of the profession to this recent case settling the question in Virginia.

R. Y. B.

THE THREE CORNERED PRIORITIES PUZZLE.—When A has a lien on property prior to B's lien on the same property, and C has a lien prior to A's but subordinate to B's, the relative priorties of the parties have occasioned the text-writers and those courts which have had the misfortune to be confronted with the question much difficulty, producing conflicting conclusions.

This situation may arise in a great many ways. For instance, under our modern registry laws, suppose A to have a deed of trust lien on Blackacre which he has not recorded. With actual knowledge of A's lien, B now takes a deed of trust of the same property, which he at once records. Because of knowledge, this lien is subordinate to A's unrecorded lien. Next, C takes a deed of trust on the same property. C is subordinate to B, because B's deed is recorded, but prior to A, because A's deed is unrecorded. In what order of priority, then, should the property be divided, supposing it not sufficient to satisfy all three liens?

The Virginia Court has decided that C being prior to A, and B being prior to C, B shall also be made prior to A, so that A, who was first in point of time of execution is now placed last when it comes to recovery.[1]

Thus, suppose Blackacre to be worth $7,000 and the lien of each party $5,000. Before C came in, A would have gotten $5,000 in full and B only $2,000. Now B gets $5,000 and C $2,000, while A gets nothing.

Or suppose Blackacre worth $5,000. A would, before the advent of C, have gotten all and B nothing. Now B gets all and A and C nothing.

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[1] Hill *v.* Rixey *et al*, 26 Gratt. 72 (1875).